

1987

# The State of Utah v. Tyrone C. Seaton : Brief of Appellant

Utah Court of Appeals

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**BRIEF**

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

**D**  
**CKET NO. 870325-CA**  
~~STATE OF UTAH,~~

Plaintiff/Respondent

vs.

PYRONE C. SEATON

Defendant/Appellant

:  
:  
:  
:  
:  
:  
:  
:

Case No. 870325-CA

Priority #2

**BRIEF OF APPELLANT**

An appeal from a conviction of child abuse, a  
Class "A" Misdemeanor, and reckless child abuse,  
a Class "B" Misdemeanor, rendered by the Honorable  
Judge Phillip H. Browning, sitting without a jury,  
in the Second Judicial District Court, County of  
Weber, State of Utah.

**DEC 21987**

**Court of Appeals**

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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STATE OF UTAH,	:	
	:	
Plaintiff/Respondent	:	
	:	
vs.	:	Case No. 870325-CA
	:	
TYRONE C. SEATON	:	Priority #2
	:	
Defendant/Appellant	:	

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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STATE OF UTAH,	:	
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	:	
TYRONE C. SEATON	:	Priority #2
	:	
Defendant/Appellant	:	

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BRIEF OF APPELLANT

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JURISDICTION

Jurisdiction to hear the above entitled appeal is conferred upon the Utah Court of Appeals, pursuant to Utah Code Annotated, 1953 (as amended), §77-35-26(2)(a).

NATURE OF THE PROCEEDINGS

This is an appeal of a bench conviction of Child Abuse, a Class A Misdemeanor, and Reckless Child Abuse, a Class B Misdemeanor, rendered by the Honorable Judge Phillip H. Browning sitting without a jury. The Defendant was found guilty on May 12, 1987, and sentenced to serve a term of one year in the Weber County Jail on July 7, 1987. The Notice of Appeal was filed with the Circuit Court of Weber County on July 29, 1987.

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

The evidence as presented at trial was insufficient to support a finding of guilt for the above mentioned crimes.

### STATEMENT OF THE FACTS

In the early afternoon of February 18, 1987, upon learning of some fighting between his girlfriend's son Antoine Lestrack, age twelve, and a neighbor boy, Bobby DeAngelis, age eleven, Defendant walked to Bobby's house and asked him to come with him in order to settle the dispute between the two boys. The Defendant escorted Bobby to the house where Defendant and Antoine lived together with Antoine's mother, Debra Lestrack.

Defendant stated at trial that he took the boys to his home in order to settle the dispute that had led to their fight earlier that afternoon. (Tr. 109-111). When the boys were together in the house, they started fighting again. Bobby DeAngelis received a bloody nose from the altercation.

Bobby DeAngelis claimed that Tyrone encouraged the boys to settle the matter by fighting it out. (Tr. 21-22). The Defendant claims that the boys started fighting on their own and that he did not know there was a fight until he returned from getting some chairs in another room and found Bobby in the bathroom having his bloody nose cleaned up by Debra Lestrack, Antoine's mother. (Tr. at 112).

### SUMMARY OF THE ARGUMENT

The Defendant contends that the State failed to prove, beyond a reasonable doubt, that the defendant committed intentional child abuse, or that he recklessly committed child

abuse.

#### ARGUMENT

THE EVIDENCE, AS PRESENTED AT TRIAL, IS INSUFFICIENT TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT OF INTENTIONAL, OR RECKLESS CHILD ABUSE.

Section 76-5-109(3) Utah Code Annotated 1981, places a burden of proof upon the State to prove beyond a reasonable Doubt that a defendant "causes or permits another to inflict physical injury upon a child," and in the absence of such proof, the defendant must be acquitted.

Counsel is mindful of the Court's rather strict standards of review when, in fact, the Court is asked to review the records to determine the sufficiency of a verdict. This view is expressed in State v. Wright, 67 Utah Adv. Rep. 25 (1987) where the Utah Court of Appeals stated that,

The standard of review for bench trials in criminal cases has been revised recently by the Utah Supreme Court. State v. Walker, 64 Utah Adv. Rep. 10 (1987). The supreme court, in modifying the standard, relied on Rule 52(a) of the Utah Rules of Civil Procedure, effective January 1, 1987, which it found applicable in criminal cases by virtue of the Utah Criminal Code Ann. §77-35-26(g) (1982). In pertinent part, Rule 52(a) provides:

In all actions tried upon the facts without a jury... findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

State v. Wright, 67 Utah Adv. Rep. 25, 26 (1987). The Court of Appeals in Wright drew again upon Walker for an interpretation of the "clearly erroneous" standard, Walker requires,

...that if the findings (or the trial court's verdict in a criminal case) are against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made, the findings (or verdict) will be set aside.

Walker, 64 Utah Adv. Rep. at 11.

In applying the above standard of review to the present case, it is clear that the trial court's verdict was against the clear weight of the evidence. There was no evidence given at the trial that would establish conclusively that the Defendant intentionally or knowingly inflicted upon the child, Bobby DeAngelis a physical injury, or that he caused or permitted Antoine Lestrick, to inflict physical injury upon Mr. DeAngelis.

The fact that the Defendant took Mr. DeAngelis to his home in order to resolve the dispute between the two boys that occurred earlier that afternoon, should not make Defendant responsible for any fights that may spontaneously break out between the boys. To allow the Defendant's duty to extend to the acts of others, over whom he had no control is to extend the intent of the child abuse statute far beyond its originally intended scope. This is not a case where the Defendant stood by and allowed another person to inflict injury upon another, this is a case where an adult, in an effort to settle a childhood tussle left the room for a moment, and a fight broke out between



tow boys of about the same age.

For a bloody nose received by an eleven year in a childhood fray, the Defendant, Tyrone Seaton has been sentenced to a year in jail on the basis that he allowed the incident to happen when the two boys were under his control or custody. If such a conviction is allowed to stand, every adult is in danger of being held liable for injuries incurred when children get into fights whether or not the adult even knew of the conduct of the children.

Moreover, there is absolutely no evidence that the Defendant intentionally forced the boys to fight causing the nosebleed of Bobby DeAngelis.

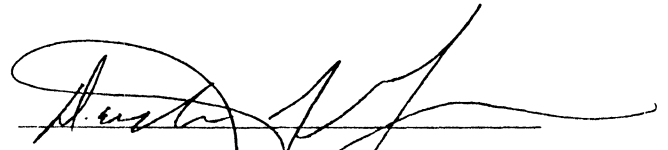
#### CONCLUSION

Based upon the foregoing arguments and a thorough review of the evidence, the Defendant respectfully requests this Court to reverse his conviction.

ADDENDUM

There are no rulings of the lower court, rules or other documents necessary for one reading this brief.

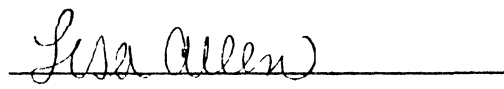
RESPECTFULLY SUBMITTED this 23rd day of November, 1987.

  
DEIRDRE A. GORMAN  
Attorney for Defendant

**CERTIFICATE OF MAILING**

I hereby certify that I mailed (4) true and correct copies of the foregoing Brief of Appellant, postage prepaid, on this 23 day of November, 1987, to the following:

DAVID L. WILKINSON  
UTAH STATE ATTORNEY GENERAL  
236 State Capitol Building  
Salt Lake City, Utah 84114

  
Secretary

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of November, 1987.



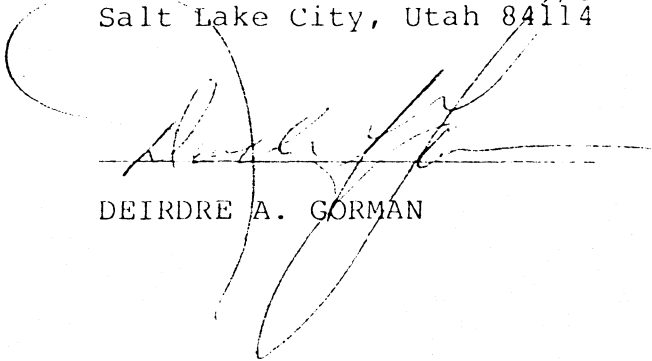
DEIRDRE A. GORMAN

Attorney for Defendant

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I hereby certify that I mailed (4) true and correct copies of the foregoing Brief of Appellant, postage prepaid, on this 25<sup>th</sup> day of November, 1987, to the following:

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DEIRDRE A. GORMAN

ADDENDUM TO APPELLANT'S BRIEF  
State v. Seaton Case No. 870353-CA

1 house?

2 A Tyrone, Antoine, his mom.

3 Q Antoine's mom?

4 A His aunt and a whole bunch of other people. I  
5 don't remember.

6 Q Was Freedom there?

7 A Yes.

8 Q Okay. Tyrone told you to go inside the house?

9 A Yes.

10 Q So, did you go inside?

11 A Yes.

12 Q Who was--why did he have you go inside? What happened  
13 when you went inside the house, let me ask you that? What  
14 happened when you went inside the house?

15 A Well, at first Antoine and me had to fight.

16 Q How come you had to fight?

17 A Don't ask me.

18 Q Well, whose idea was it?

19 A Because Tyrone--

20 Q How was it his idea?

21 A He told us to, we need to.

22 Q What did he say?

23 A Just to fight.

24 Q Did he say why?

25 A No.

1 Q Did you want to fight Antoine?  
2 A No.  
3 Q Now Antoine is bigger than you are?  
4 A Yes.  
5 Q Did you have a fight with Antoine?  
6 A Yes.  
7 Q Who started the fight?  
8 A Antoine.  
9 Q What did he do?  
10 A Started kicking me.  
11 Q Where did he kick you?  
12 A In the guts, in my face, all around.  
13 Q Did you hit him back?  
14 A No.  
15 Q And Tyrone didn't tell you why he wanted you to  
16 fight?  
17 A Huh-uh.  
18 Q Did you know why?  
19 A No.  
20 Q Okay. Well, what--what is happening to Brock and  
21 Jeremy while you are inside that house fighting with Antoine,  
22 Antoine is kicking you?  
23 A Well, I had a bloody nose. And then I went in  
24 the bathroom. And then Brock and Freedom had to fight. I  
25 don't know what happened to Jeremy.

1 it is to be a part of someone, or whatever the case is, you  
2 don't have to be bothering anyone else.

3 Q So did you encourage any fights either between  
4 Antoine and Bobby or Brock and Freedom that day?

5 A Did I encourage the fight? 'No, I did not. I mean  
6 I don't see any reason why I would encourage any fight, Like  
7 I explained before.

8 Q Okay. I think that's fine.

9 A Okay.

10 Q Where were you when Antoine fought Bobby?

11 A Well, Debra asked would I got get the chairs for  
12 her. And right before Debra asked to get the chairs, I  
13 recall, you know, saying to the guys, hey, you guys either  
14 solve the problems, or, you know, let it go.

15 Q Now what did you mean by that?

16 A Either you going to shake hands, make friends,  
17 whatever your problem was, try to figure out how to work the  
18 problem out, or I just take you guys home as soon as I get  
19 them, you know, folding chairs, then I take you home.

20 Q Okay. So you went in to get some chairs?

21 A Yes.

22 Q When did this happen?

23 A I don't know, because when I got back with the chair,  
24 Debra was in the bathroom washing this little guy's face off.  
25 And I got a cold towel and wiped the blood off--his stain

1           Q     This is what you said at the home?

2           A     Okay. The reason why the kids was at my home to  
3 begin with, is first of all I didn't know where Mrs. DeAngelis  
4 lived.

5           Q     Okay.

6           A     I basically knew what's his name, this gentleman  
7 right here, yeah, I basically knew where he lived.

8           Q     Brock?

9           A     Yes, Brock. They explained to me, you know, in  
10 part, but with all the commotion going on, plus they got a  
11 birthday party, and I couldn't figure out, you know, how can  
12 I get in touch with their mom here, and how can I get in  
13 touch with their mom there. It was basically get them  
14 together. See if they could get some type understanding  
15 between each other. If not, you know, then I take the guys  
16 home, just stay away from each other. They will be better  
17 off if you just don't even deal with each other.

18          Q     What did you think would happen when you took them  
19 to your house?

20          A     I didn't know that they were going to get into  
21 another altercation, because that was the last thing I was,  
22 you know, expecting, for Antoine, or either one of those guys  
23 to get into. You know, because my kids basically know that  
24 they not allowed to inflict bodily--be in a body's mind to do  
25 anything, whether it is to, you know, talk to someone, what

1 What's the problem.

2 I told the guys I would like you guys to put your stuff  
3 down and come and go with me, okay.

4 Q Did you--did you try to scare them?

5 A Do you know something, Debra has told me time and  
6 time again, it is just the way I talk, you know. It's the  
7 way I explain myself or express myself, maybe to someone  
8 else, you know, like it bothers them even in person.

9 Q Did you talk the same then as you are talking now?

10 A Just like I am talking now.

11 Q Did you raise your voice?

12 A I mean I use my hands. I use my hands, I talk  
13 this way because I got a deep voice. I got a deep voice.

14 Q Did you raise your voice to those kids at any time?

15 A No, I didn't.

16 Q Okay. What did you say to them.

17 A I told the guys that I want you guys to come and go  
18 with me.

19 Q Okay.

20 A And they put these little toys down, whatever they  
21 had, they put their little toys down. I taken the kids back  
22 to the house. And I asked them, I say, you guys, you know,  
23 can you get along, you know? Explain to me what the problem  
24 is. Either you can get along or you can't. That's basically  
25 what I was trying for.



1 Jeremy answered the door. I asked was his mom and dad home.

2 Q Okay. Now why did you go to the Boney house?

3 A The gather--to gather all the boys together to  
4 find out what stimulate the problem, why there was an  
5 altercation between each other.

6 Q Did you see an altercation?

7 A I see the guys, you know, yakking back and forth  
8 at each other. You know, screaming back and forth. Well,  
9 blah, blah this and blah, blah that. I couldn't gather what  
10 they were saying to each other, but it did look like it  
11 wasn't on a friendly basis.

12 Q So did you see them hit each other?

13 A I wasn't aware of the fight before it happened.

14 Q Okay.

15 A It was explained to me that they had been into an  
16 altercation.

17 Q Okay.

18 A But, you know, as far as me seeing it, you know,  
19 what was inflicted upon each other, I didn't see that.

20 Q Okay. So tell me what you did.

21 Q Okay. So I go on in, Hi, Jeremy, I said your mother  
22 or father home? He told me no. I said well, I apologize  
23 for coming to your home. I need to get all you guys that  
24 was involved in this fight, and I need to get you together  
25 so I can find out what's going on. How come these fights.